

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawaii 96813

May 13, 2010

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Board Members:

**SUBJECT:** REQUEST FOR APPROVAL OF A MEMORANDUM OF AGREEMENT BETWEEN THE DIVISION OF FORESTRY AND WILDLIFE, THROUGH ITS BOARD OF LAND AND NATURAL RESOURCES AND THE UNIVERSITY OF HAWAII, INSTITUTE FOR ASTRONOMY FOR EMERGENCY ACCESS TO SKYLINE TRAIL AND POLIPOLI ACCESS ROAD, KAHIKINUI AND KULA FOREST RESERVES, MAUI, TMKS (2) 2-2-007:001 AND (2) 2-2-006:999 (POLIPOLI ACCESS ROAD).

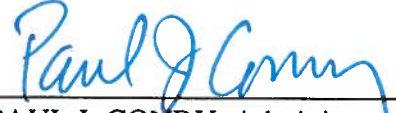
**Background:** The University of Hawaii, Institute for Astronomy (UH-IfA) maintains facilities atop Mount Haleakala in Haleakala National Park. Regular access to these facilities is via Haleakala Highway. UH-IfA has requested that DLNR-DOFAW authorize access to Skyline Trail and Polipoli Access Road for the purpose of emergency evacuation and subsequent emergency maintenance of valuable equipment only, in the event that regular access to and from its facilities at Haleakala Observatory via Haleakala Highway is unavailable. A draft Memorandum of Agreement granting this request is attached as Exhibit A.

**RECOMMENDATION:**

That the Board:

1. Approve the execution of a Memorandum of Agreement (Exhibit A) between the Division of Forestry and Wildlife, through its Board of Land and Natural Resources and the University of Hawaii, Institute for Astronomy for emergency access to Skyline Trail and Polipoli Access Road, subject to review and approval as to form by the Attorney General's office and such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully submitted,



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PAUL J. CONRY, Administrator

APPROVED FOR SUBMITTAL:



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Laura H. Thielen, Chairperson

Attachment (Exhibit A)

**DRAFT**

**MEMORANDUM OF AGREEMENT**

**Between**

**The State of Hawaii Department of Land and Natural Resources,  
Division of Forestry and Wildlife**

**and**

**The University of Hawaii,  
Institute for Astronomy**

**A. Preface**

This Memorandum of Agreement (MOA) is made on \_\_\_\_\_, 2010 between the State of Hawaii Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) by its Board of Land and Natural Resources and the University of Hawaii, Institute for Astronomy (UH-IfA).

**B. Purpose**

The purpose of this agreement is for DOFAW to authorize access to Skyline Trail and Polipoli Access Road for UH-IfA staff, lessees, consultants, contractors and/or persons acting for or on its behalf for the purpose of emergency evacuation and subsequent emergency maintenance of valuable equipment only, in the event that regular access to and from its facilities at Haleakala Observatory via Haleakala Highway is unavailable. For the purpose of this agreement, Polipoli Access Road and Skyline Trail are defined as noted on the accompanying map, Exhibit A. Skyline Trail passes through two DOFAW forest reserves: Kahikinui and Kula.

**C. Responsibilities**

1. Use of Skyline Trail and Polipoli Access Road shall be limited to emergency use only. Non-emergency use by UH-IfA personnel or their assigns using the key(s) provided by DOFAW will result in automatic termination of this MOA.
2. The MOA shall be effective from the date indicated above and shall continue until cancellation by either party. UH-IfA may request cancellation of this MOA at any time by providing a written request to DOFAW at least thirty (30) days in advance of the requested cancellation date. This MOA is revocable and terminable at any time for any reason at the sole and absolute discretion of the Chairperson of the Board of Land and Natural Resources.
3. Emergency access to Skyline Trail and Polipoli Access Road shall be provided free of charge to UH-IfA.

4. UH-IfA shall maintain and keep the roadway or premises in a neat, clean and sanitary condition whenever its use is required. UH-IfA shall not deposit any trash or debris in the area.
5. UH-IfA shall comply with all laws, rules and regulations of the Federal, State and County governments relative to the use of the subject area, including those relating to public health.
6. This MOA does not grant the UH-IfA exclusive access to the roadway or premises.
7. UH-IfA shall supply DOFAW a name and local telephone number of a contact person who can be reached at any time around the clock.
8. UH-IfA, its lessees, consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials within the MOA area or premises except as permitted by law. UH-IfA, its lessees, consultants, contractors and/or persons acting for or on its behalf shall not allow to be brought onto the roadway or premises area any such materials except to use in the ordinary course of business, and only after written notice is given to DOFAW of the identity of such materials and upon issuance of the DOFAW's consent, the same of which may be withheld at DOFAW's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by UH-IfA and its lessees, consultants, contractors and/or persons acting for or on its behalf, then UH-IfA and its lessees, consultants, contractors and/or persons acting for or on its behalf, shall be responsible for the cost thereof.
9. For purposes of this MOA, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous substance, or oil as defined in the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.
10. UH-IfA, its lessees, consultants, contractors and/or persons acting for or on its behalf in the exercise of this MOA shall use appropriate precautions and measures to minimize inconveniences to the State, landowners, and the public in general with regards to the use of the MOA area or premises.
11. UH-IfA, its lessees, consultants, contractors and/or persons acting for or on its behalf in the exercise of this MOA shall not store any personal belongings in the MOA area or premises during the effective period of this MOA.
12. UH-IfA and its lessees, consultants, contractors and/or persons acting for or on its behalf shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation with regards to the use of the MOA area or premises.

13. All disputes or questions arising under this MOA shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
14. This MOA or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
15. The Department of Land and Natural Resources reserves the right to impose additional, but responsible terms and conditions as it deems necessary while this MOA is in force.
16. DOFAW does not make any representations or assurances regarding the quality of Skyline Trail and Polipoli Access Road and whether they are passable or not by 4WD or other vehicles at any given time. DOFAW conducts only periodic maintenance of Skyline Road and Polipoli Access Road.
17. In the event of emergency closure of Kula and/or Kahikinui Forest Reserves by DOFAW, complete passage of Polipoli Road to Hwy 337 may not be possible without first contacting DOFAW for current gate information.
18. With the exception of a facility-wide evacuation from Haleakala Observatory during or immediately following a emergency incident that may initially trigger UH-IfA to employ this permit, UH-IfA must file a written report to the DOFAW Maui Branch Manager stating the nature and details of any on-going emergency or emergency maintenance use of Skyline Trail and Polipoli Access Road within seven (7) calendar days of such use, including lists of all personnel transiting the MOA area.
19. Disturbance of vegetation and wildlife will be avoided as much as possible.
20. Precautions will be taken, including consultation with DOFAW and the Maui Invasive Species Committee, to prevent introduction of plants or animals not naturally present in the area. Should an infestation develop as a result of use of the MOA area by UH-IfA personnel or it's lessees, contractors or assigns, UH-IfA is responsible for eradication by methods to be specified by DOFAW.

**IN WITNESS WHEREOF** the **PARTIES** hereto have executed this **MEMORANDUM OF UNDERSTANDING** by way of signature and date below.

University of Hawaii, Institute for Astronomy:

\_\_\_\_\_  
Rolf-Peter Kudritzki  
Director

Date:\_\_\_\_\_

Board of Land and Natural Resources:

\_\_\_\_\_  
Laura Thielen  
Chairperson

Date:\_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Deputy Attorney General

Date:\_\_\_\_\_



# Exhibit A: DLNR-DOFAW / UH-IfA MOA

